

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan Waterman	Team: Squad #10	CCRB Case #: 202008106	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 11/26/2020 7:36 PM	Location of Incident: East 161st Street and Grand Concourse	Precinct: 44	18 Mo. SOL 5/26/2022	EO SOL 5/26/2022	
Date/Time CV Reported Wed, 12/02/2020 10:41 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/02/2020 10:41 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM George Layng	15804	966663	044 PCT
2. SGT Timothy Burke	03879	950130	044 PCT
3. POM Safayath Jamil	13348	960722	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Timothy Burke	Abuse: Sergeant Timothy Burke stopped an individual.	
B.SGT Timothy Burke	Abuse: Sergeant Timothy Burke stopped an individual.	
C.SGT Timothy Burke	Abuse: Sergeant Timothy Burke stopped § 87(2)(b)	
D.POM George Layng	Off. Language: Police Officer George Layng made remarks to § 87(2)(b) based upon race.	
E.POM George Layng	Discourtesy: Police Officer George Layng spoke discourteously to § 87(2)(b)	
F.POM Safayath Jamil	Discourtesy: Police Officer Safayath Jamil spoke discourteously to § 87(2)(b)	
G.SGT Timothy Burke	Abuse: Sergeant Timothy Burke failed to provide an individual with a business card.	
H.SGT Timothy Burke	Abuse: Sergeant Timothy Burke failed to provide an individual with a business card.	
I.POM George Layng	Off. Language: Police Officer George Layng made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
J.POM George Layng	Discourtesy: Police Officer George Layng spoke discourteously to § 87(2)(b)	
K.POM George Layng	Discourtesy: Police Officer George Layng spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On December 2, 2020, § 87(2)(b) filed this complaint during a phone call with the assigned investigator.

On November 26, 2020, at approximately 7:36 p.m., § 87(2)(b) was walking eastbound on East 161st Street in the Bronx with his daughter and two friends unknown to the investigation. At the northwest corner of East 161st Street and Grand Concourse, Sergeant Timothy Burke of the 44th Precinct stopped two people in § 87(2)(b) party (**Allegation A, Abuse of Authority: Stop, § 87(2)(g) Allegation B, Abuse of Authority: Stop, § 87(2)(g) Allegation C, Abuse of Authority: Stop, § 87(2)(g)** Police Officer George Layng of the 44th Precinct called § 87(2)(b) a “savage” (**Allegation D, Offensive Language: Race, § 87(2)(g) Allegation E, Discourtesy: Word, § 87(2)(g)** Police Officer Safayath Jamil of the 44th Precinct told § 87(2)(b) “Teach your kid, what kind of a piece of shit you are” (**Allegation F, Discourtesy: Word, § 87(2)(g)** Sgt. Burke failed to provide a business card to § 87(2)(b) friends (**Allegation G and H, Abuse of Authority: Failure to Provide RTKA Card, § 87(2)(g)** PO Layng called § 87(2)(b) a “pussy” and said, “You always run your mouth but never do shit, do you?” (**Allegation I, Offensive Language: Gender, § 87(2)(g) Allegation J, Discourtesy: Word, § 87(2)(g) Allegation K, Discourtesy: Word, § 87(2)(g)**

§ 87(2)(g), § 87(4-b)

No summonses or arrests resulted from this incident.

The investigation received body-worn camera (BWC) and cell phone video footage regarding this incident, the relevant aspects of which shall be discussed below (**BR 01-10**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Timothy Burke stopped an individual.

Allegation (B) Abuse of Authority: Sergeant Timothy Burke stopped an individual.

Allegation (C) Abuse of Authority: Sergeant Timothy Burke stopped § 87(2)(b)

In his CCRB interview (**BR 11**), § 87(2)(b) said that on November 26, 2020, at approximately 7:36 p.m., he arrived in the Bronx by train after picking up his daughter from Brooklyn. § 87(2)(b) wore a black hoodie and facemask. § 87(2)(b) also carried his daughter’s bookbag. § 87(2)(b) met with two friends at 161st Street and Grand Concourse in the Bronx. As § 87(2)(b) his daughter, and friends began to walk back to his apartment at § 87(2)(b) in the Bronx, police officers approached one of § 87(2)(b) friends and said that he fit the description of someone who had just committed a robbery. This friend wore a facemask, jacket, and a fitted hat. The officers said that § 87(2)(b) his daughter, and his friends were not free to leave.

Per the 911 CD (**BR 12-13**), at 7:29 p.m. on November 26, 2020, a caller with the last name “§ 87(2)(b)” called 911 and said that he saw two individuals robbing multiple people at East 161st Street and Gerard Avenue. § 87(2)(b) said that the individuals had just robbed a woman after knocking her on the ground. § 87(2)(b) did not know if they had any weapons. § 87(2)(b) described the assailants as 2 Puerto Rican males, one wearing a white hoodie and another wearing a black cap. § 87(2)(b) said the two assailants were walking towards Walton Avenue from Gerard Avenue.

Per the 911 CD (**BR 12-13**), at 7:30 p.m., the 911 dispatcher broadcasted the following information over the patrol radio frequency: at East 161st Street and Gerard Avenue, two males had robbed someone and punched them in the face. The dispatcher relayed the following description of the two males at 7:31 p.m.: one male Hispanic wearing a white hoodie and one male Hispanic wearing a black cap, both walking towards Walton Avenue.

The following review of BWC footage is compiled chronologically.

Per PO Cruz’s (**BR 01**) and Sgt. Burke’s (**BR 03**) BWC, at 7:33 p.m. and the 01:00 timestamp, the two exited their marked vehicle and approached a group of six people standing on the northwest corner of Grand Concourse and East 161st Street (Grand Concourse is one block

southeast of Walton Avenue and two blocks southeast of Gerard Avenue). Two of these people were § 87(2)(b) and his daughter. § 87(2)(b) wore a black jacket, dark grey pants, and red shoes. § 87(2)(b) also carried his daughter's backpack. The remaining individuals were young, dark-skinned males. One of them wore a light-colored hooded jacket, light blue jeans, and grey shoes. Another male wore a green hooded shirt under a shiny dark grey jacket, as well as dark pants and shoes. A third male wore a baseball cap, a dark blue overshirt/jacket, dark pants and shoes with yellow soles. The fourth male wore a black hat, a black overshirt/jacket with white accents, black pants, and white sneakers.

At the 01:00 timestamp of his BWC (**BR 01**), PO Cruz grabs the sleeve of the man in the light-colored hooded jacket and walks him to a pedestrian island. Sgt. Burke asks the six if they are all together as a group, and at least one of the six says that they are. At the 01:15 timestamp, PO Cruz asks the men in the light-colored hooded jacket and the man wearing a shiny grey jacket, "Did you just have a problem with a woman?"

At the 01:15 timestamp of Sgt. Burke's BWC (**BR 03**), Sgt. Burke asks, "Did you just have a fight? Did you just have a problem with a woman?" The man in the light-colored hooded jacket replies, "We just came off the train." Sgt. Burke, at the 01:23 timestamp, says "Someone just got robbed over here." Sgt. Burke also tells § 87(2)(b) that he and his daughter are free to leave, but most of the adults in the group say, "We're all together."

By the 01:28 timestamp of PO Cruz's BWC (**BR 01**), there are at least four officers standing in front of the group on Grand Concourse. Sgt. Burke asks § 87(2)(b) "Can you just give me a second to see who..." before trailing off as § 87(2)(b) begins to yell.

At the 01:40 timestamp of Sgt. Burke's BWC (**BR 03**), he tells the man in the shiny grey jacket and the man in the light-colored hooded jacket, "Alright, just hang out until we find out who got robbed." At the 01:45 timestamp, Sgt. Burke says, "This guy matches a description," referring to the man in the light-colored jacket. At the 01:55 timestamp, Sgt. Burke says, "Just let me get the woman to come here to say you didn't do it and then you guys are good." By the 01:57 timestamp, six officers stand in front of the group. Sgt. Burke continues to stand in front of the man in the shiny grey jacket and the man in the light-colored jacket. Sgt. Burke says over the radio at the 02:35 timestamp, "Once you find her [the person who got robbed], swing over to 161 and Grand Concourse." At the 03:30 timestamp, Sgt. Burke tells the man in the shiny grey jacket and the man in the light-colored jacket, "Yeah, just give me two more minutes, alright? That's it. And you'll be on your way." Sgt. Burke explains to the two at the 03:43 timestamp that the description was, "A guy with a light-colored hoodie and a... listen, it's a light-colored hoodie, you're wearing a black jacket, you're coming right from Gerard..." The man in the shiny grey jacket tells Sgt. Burke that his jacket is grey. Sgt. Burke replies, "Are you going to have a semantical argument with me or are you just gonna accept it?" At the 04:28 timestamp, Sgt. Burke tells everyone, after speaking with the dispatcher, "Alright, you guys are good." Sgt. Burke then walks away.

Given what is depicted on the BWC, the investigation determined that Sgt. Burke only stopped the man in the shiny grey jacket and the man in the light-colored jacket: the other members of their party, including § 87(2)(b) and his daughter, were free to leave.

In his CCRB interview (**BR 14**), Sgt. Burke said that he responded to a radio run for a person robbed at 161st Street and Gerard Avenue. The radio run description stated two males, though Sgt. Burke did not recall the clothing description. The males were walking and had fled eastbound from 161st Street and Gerard Avenue. The 911 caller also gave their name. Sgt. Burke believed that the 911 caller was a third party but was not sure. Sgt. Burke was never able to get in contact with the caller. Shortly after receiving the call, Sgt. Burke spotted two Hispanic or Black males in their early 20s who matched the description walking at 161st Street and Grand Concourse. There were approximately three people standing with the two subject males. § 87(2)(b) was one of those three people. § 87(2)(b) was not one of the people suspected of committing the robbery. Sgt. Burke approached the two males and asked them some questions about where they had come from. Sgt. Burke was the primary officer who spoke with the two males. Sgt. Burke

asked the two males if they had had any issues at 161st Street and Gerard Avenue. Sgt. Burke asked the two males where they were coming from. Sgt. Burke asked the two males if they had seen anything at 161st Street and Gerard Avenue – if they had noticed any commotion or anything like that. In response to these questions, the two males said that they had not seen any commotion or had any issue. Sgt. Burke considered the two males free to leave at this point, though he did not tell them that they were free to leave. Sgt. Burke did not do anything to tell the two males that they were free to leave. Sgt. Burke said that he did not detain or stop the two males. Sgt. Burke, upon reviewing his own BWC between the 01:34 and 01:59 timestamps, in which he said, “Just let me get the woman to come here to say you didn’t do it and then you guys are good,” told the investigation that he never ordered the two males to stay on-scene, but only tried to convince them to stay.

Sgt. Burke noted in his memo book that he conducted a “Level 2 encounter” at East 161st Street and Grand Concourse, which resulted in negative results (BR 18).

In his CCRB interview (BR 15), PO Layng said that his understanding of the job was responding to a radio run for a robbery in progress and that he backed up other units in regard.

In his CCRB interview (BR 16), PO Jamil said that he responded to a radio run from Sgt. Burke regarding four males stopped regarding a robbery.

The investigation pleaded these allegations solely to Sgt. Burke because he was the supervisor on-scene and primarily conducted the investigation.

Sgt. Burke said the individuals were always free to leave and he was merely attempting to convince them to stay and wait. Sgt. Burke wrote in his memo book that this was a “Level 2 encounter,” which is one level below a stop. § 87(2)(g) a situation in which a uniformed officer physically guides them in the direction opposite of their travel, in which half a dozen police officers stand in their path, in which an officer asks accusatory questions, in which an officer characterizes them as matching a description, in which an officer repeatedly tells them to wait to see whether a witness identifies them, in which an officer tells them to “just... accept it,” and in which an officer ultimately releases a person by saying, “You guys are good” and walking away. § 87(2)(g)

Per *People v. Peterson, 110 A.D.3d 1103* (BR 17), officers have reasonable suspicion to stop an individual based on the general similarity of the individual’s physical characteristics to the description of the offender broadcast in police radio calls, and the observation of the individual in close spatial and temporal proximity to the crime.

Sgt. Burke said he approached the two male victims because they fit the description put over the radio of the robbery suspects. The investigation credited that the two males were in close spatial (two blocks) and temporal (a few minutes) proximity to the alleged robbery at East 161st Street and Gerard Avenue. The investigation credited that the man in the light-colored jacket fit the description provided to the officers by the 911 dispatcher of a Hispanic male wearing a white hoodie. § 87(2)(g)

§ 87(2)(g) – while he may have appeared to be a Hispanic male, he did not wear a dark hat or a light-colored jacket. § 87(2)(g)

The BWC confirmed that Sgt. Burke told § 87(2)(b) on-scene that he was free to leave within seconds of beginning to interact with him and § 87(2)(b) and chose to remain on scene. § 87(2)(b)

Allegation (D) Offensive Language: Police Officer George Layng made remarks to § 87(2)(b) based upon race.

Allegation (E) Discourtesy: Police Officer George Layng spoke discourteously to § 87(2)(b)

In his CCRB interview (BR 11), § 87(2)(b) said that PO Layng told § 87(2)(b) that “I know you beat your wife” and called him a “savage” during an interaction with him.

Per a cell phone video provided by § 87(2)(b) (BR 08), § 87(2)(b) videotapes PO Layng while identifying the officer as, “The same nigga that was in my crib!” at the 00:00 timestamp. PO Layng responds, “Yeah, when you beat up your wife.” § 87(2)(b) then yells at PO Layng and the other officers for approximately 30 seconds, telling PO Layng, “Suck my dick” and calling the officers “pussies.” At the 00:30 timestamp, § 87(2)(b) says, “Yeah, I beat my girl up!” and PO Layng responds, “Yeah, ‘cuz you’re a savage.” PO Layng repeats, “You’re a savage” twice more. After PO Layng says this multiple times, § 87(2)(b) calls PO Layng a “fag” and “faggot.”

PO Layng’s BWC (BR 06) captures this portion of the interaction from PO Layng’s point of view and is consistent with what is shown in § 87(2)(b) video.

Per PO Jamil’s BWC (BR 05), at the 02:34 timestamp, prior to the interaction that is described above, § 87(2)(b) refers to PO Layng as “that faggot cop that came to the crib.”

In his CCRB interview (BR 15), PO Layng said that he had previously responded to § 87(2)(b) address regarding a domestic violence incident in which § 87(2)(b) child called 911 and said, in sum and substance, “Daddy’s beating up Mommy.” PO Layng characterized § 87(2)(b) as becoming “irate” during the incident, yelling at officers and calling them “fags.” § 87(2)(b) screamed and made hand gestures. § 87(2)(b) turned his yelling towards PO Layng; PO Layng believed that § 87(2)(b) did so because § 87(2)(b) had had prior interactions with him. § 87(2)(b) did not ever try to physically approach PO Layng or other officers. § 87(2)(b) continued to yell at PO Layng, noting that he had previously been to § 87(2)(b) apartment. PO Layng responded, “Yeah, because you beat your wife.” § 87(2)(b) responded, in sum and substance, that he had gotten away with beating his wife. In response to this, PO Layng called § 87(2)(b) a “savage,” in response to § 87(2)(b) pride in getting away with domestic violence and in his use of the homophobic slur, “fag.”

The Oxford English Dictionary (OED)(BR 19) notes that the use of “savage” to refer to a person is now generally considered to be offensive except when used in historical reference to the language or attitudes of the past. The OED cites several textual examples of the word being used to refer to individuals of Middle Eastern, American Indigenous, African, Japanese, and non-Christian ancestry and religious practice as members of people regarded as primitive and uncivilized.

Per Patrol Guide Procedure 203-10 (BR 20), officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity or race.

Per Patrol Guide Procedure 200-02 (BR 21), the values of the NYPD include the pledge to “maintain a higher standard of integrity than is generally expected of others” and to “respect the dignity of each individual and render [their] services with courtesy and civility.”

The word “savage” has offensive racist connotations of which a reasonable person should be aware. § 87(2)(g)

Allegation (F) Discourtesy: Police Officer Safayath Jamil spoke discourteously to § 87(2)(b)

This allegation stems from PO Jamil’s BWC (BR 05). At the 01:00 timestamp, PO Jamil walks up to stand with the other officers present on-scene. § 87(2)(b) yells constantly and his child begins to cry. § 87(2)(b) swears in front of his daughter, using the word, “fuck” and tells officers, “suck my dick.” At 01:38, PO Jamil says, “Nice of you talking like that in front of your kid.” § 87(2)(b) continues to yell and swear at officers. The child cries. At the 03:15 timestamp, after § 87(2)(b) continues to swear and yell, PO Jamil says, “Yeah, you talk like that in front of your kid.” PO Jamil continues at 03:23, “Teach your kid this, teach your kid this, what kind of piece of shit you are, teach your kid. Yeah, that’s what you are.” PO Jamil leaves the scene a few seconds later.

In his CCRB interview (BR 16), PO Jamil said that he told § 87(2)(b) “Show your kid what kind of piece of shit you are” because of how § 87(2)(b) was acting in front of his child. PO Jamil noted that § 87(2)(b) was “cursing in a bad way” and that the child repeatedly asked § 87(2)(b) to stop.

Per Patrol Guide Procedure 200-02 (BR 21), the values of the NYPD include the pledge to “maintain a higher standard of integrity than is generally expected of others” and to “respect the dignity of each individual and render [their] services with courtesy and civility.”

Per DAO-DCT Disciplinary Case No. 2013-10143 (BR 22), “profanity has been found to be permissible where the officer has resorted to such language in the heat of a highly dangerous situation.”

§ 87(2)(g)

Allegation (G) Abuse of Authority: Sergeant Timothy Burke failed to provide an individual with a business card.

Allegation (H) Abuse of Authority: Sergeant Timothy Burke failed to provide an individual with a business card.

This allegation stems from Sgt. Burke’s BWC (BR 03). At the conclusion of this incident, Sgt. Burke never offers to provide a business card to either of the two males that he stopped.

In his CCRB interview (BR 14), Sgt. Burke said that he was not required to offer a business card at the conclusion of this incident because he did not detain the two males, and the situation did not fit any other criteria that would require him to offer a business card.

Per Patrol Guide Procedure 203-09 (BR 23) and New York City Administrative Code § 14-174 (BR 24), members of service are to offer business cards at the conclusion of certain law enforcement activities, including stops, questions, and frisks which do not result in an arrest or summons.

§ 87(2)(g)

Allegation (I) Offensive Language: Police Officer George Layng made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (J) Discourtesy: Police Officer George Layng spoke discourteously to § 87(2)(b)

Allegation (K) Discourtesy: Police Officer George Layng spoke discourteously to § 87(2)(b)

This allegation stems from PO Layng’s BWC (BR 06). At the 03:51 timestamp, PO Layng steps into his marked vehicle. § 87(2)(b) continues to call PO Layng a “faggot” and then says to PO Layng, “Kay, pussy!” PO Layng responds, “Pussy. You always run your mouth but never do shit, do you?” before sitting down in his marked vehicle and deactivating his BWC.

In his CCRB interview (BR 15), PO Layng said that he said, “You always run your mouth, but you never do shit, do you?” because in the previous time he had interacted with § 87(2)(b) § 87(2)(b) threatened to loose his pit bull on PO Layng but ultimately did not do so. PO Layng also noted that he was frustrated when he said this. At first, PO Layng did not recall using the word, “pussy.” After reviewing his BWC, PO Layng said he used the word “pussy” because § 87(2)(b) had called him a “pussy” and PO Layng was very frustrated and “irate” at the situation. PO Layng had no other reason to use the word.

Per Patrol Guide Procedure 203-10 (BR 20), officers are prohibited from using discourteous or disrespectful remarks regarding another person’s gender or gender identity/expression.

Per Patrol Guide Procedure 200-02 (BR 21), the values of the NYPD include the pledge to “maintain a higher standard of integrity than is generally expected of others” and to “respect the

dignity of each individual and render [their] services with courtesy and civility.”

That a civilian uses offensive language does not give license to officers to parrot the same offensive language to the civilian. That an officer is frustrated and irate does not give license to officers to use offensive language. § 87(2)(g)

Per Patrol Guide Procedure 200-02 (BR 21), the values of the NYPD include the pledge to “maintain a higher standard of integrity than is generally expected of others” and to “respect the dignity of each individual and render [their] services with courtesy and civility.”

Per DAO-DCT Disciplinary Case No. 2013-10143 (BR 22), “profanity has been found to be permissible where the officer has resorted to such language in the heat of a highly dangerous situation.”

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Jamil has been a member of service for five years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Layng has been a member of service for three years and has been a subject in three CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Burke has been a member of service for 10 years and has been a subject in 14 CCRB complaints and 32 allegations, three of which were substantiated or cited.
 - § 87(2)(g), § 87(4-b)
 - 201900379 involved a substantiated allegation of discourtesy – word. The Board recommended and the NYPD imposed command level instructions.
 - 201908431 involved a substantiated allegation of discourtesy – word. The Board recommended and the NYPD imposed formalized training.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 22, 2021, the New York City Office of the Comptroller had no record of any Notices of Claim filed regarding this incident (**BR 28**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Squad: 10

Investigator:	<u>Ethan C. Waterman</u>	<u>Inv. Ethan Waterman</u>	<u>02/01/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>2/2/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date